Again it says "Treason against the United States, shall consist only in levying War against *them*, or in adhering to *their* enemies, etc.". Here it is apparent the reference is to the whole United States.

The respondent criticizes the "diction" of the Constitution for using the plural in referring to a collective body, and for that reason, in some way, contends that the plural as used in the 18th century may refer to the two Houses in the alternative. There is no merit in this suggestion. The respondent overlooked the XXth Amendment, *adopted in 1933*, where it is provided that "The Congress shall assemble at least once in every year * * * unless *they* shall by law appoint a different day". It is, of course, clear that the reference here could not be to either House in the alternative, but is to the two Houses that compose Congress.

If the Constitution is so perfectly clear in respect to all its other plural references, where does the difficulty arise with respect to the expression "unless the Congress by their adjournment prevent"? Language could hardly be clearer or more explicit than that. The word "their" must refer to the two houses of Congress and not to either one of them in the alternative, not only because the text is clear and the Constitution is clear with reference to all other plural references, but also because neither House alone possesses the power to adjourn the Congress. (Const. Art. II, sec. 5; Jefferson, Senate Manual, 1936, p. 311.)

No instrument was ever written whose language is less open to misunderstanding than the Constitution that was submitted to the States in 1787. Nothing was left to inference that could be explicitly stated. We must take it as we find it and not undertake to change it by construction, because, where the language is unambiguous, to construe is to change, and that the Courts have no right to do. If ordinary meaning is to be ascribed to language, the expression "unless the Congress by their adjournment prevent" can

mean only one thing, namely, "unless the Congress by the concurrence of both Houses that compose it adjourn the Congress and such adjournment of Congress prevents the return of the bill". In no other case does the Constitution give the President the power of *absolute veto.* Can this Court now say that he shall have the power of *absolute veto* also in case one of the Houses of Congress alone adjourns before the bill has been returned even though such adjournment actually prevents the return of the bill? It is sufficient that effect be given to the unambiguous language of the Constitution; the results, whether they may seem to us good or bad, must be presumed to have been intended by the people who adopted the Constitution.

The contention of Petitioner is in harmony with the long continued practice of the Legislative and Executive Departments. As has already been shown (Petitioner's brief, p. 18), from 1789 to 1936—during a period of 147 years—there were 601 so-called *pocket vetoes,* but in every one of these cases the *pocket veto* followed an *adjournment of Congress,* and not a single one followed or resulted from the adjournment of *one House alone,* and yet we do not find any complaint that the Presidents were being deprived of their constitutional rights.

On the other hand, it is not difficult to see what evil results would follow from adopting the views advocated by the respondent, that a bill of which the President does not approve becomes a *pocket veto,* an *absolute veto,* merely because the House in which it originated was in recess on the 10th day after it was presented to him.

It would deprive each House of its constitutional right (Art. I, sec. 5, cl. 4) to be in recess on the tenth day after presentation of a bill of such House.

It would enable one House to kill a bill passed by both Houses.

It would make the adjournment of one House equivalent to the adjournment of Congress, although the Constitution expressly provides that such adjournment may occur only "during the Session of Congress".

Finally, it would result in great confusion and uncertainty as to whether any bill of Congress had, or had not, become a law of the United States.

If the bill had not been returned by the President in the time prescribed by the Constitution, the Congress would not know whether the bill had been signed by him and had become a law, or whether he desired to kill it due to the recess of the House of origin. Whether, in such case, the bill had died or was yet alive, by operation of the constitutional provision, would depend on proof of many extraneous facts, and with no power in any court to coerce either the legislative or excutive branches, and the Congress standing idly by ready, but unable, to act in a matter with respect to which it was vested by the Constitution with "all legislative powers".

We can perceive no reason why the President could not, if he thought he was being deprived of his constitutional rights, convene the House of origin in extra session for the purpose of returning a bill with his objections. The Constitution (Art. II, sec. 3) gives him authority to do so.

ASHBY WILLIAMS,
815 Fifteenth St., N. W.,
Washington, D. C.,
JAMES J. LENIHAN,
516 Investment Bldg.,
Washington, D. C.,
Attorneys for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 939

DAVID A. WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims overruling the petition below (R. 6) was entered without an opinion.

JURISDICTION

The order of the Court of Claims was entered February 8, 1937 (R. 6). The petition for a writ of certiorari was filed April 30, 1937 (R. 6). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.